

Michele Tizzano  
11 Yennicock Ave  
Port Washington, NY 11050

2024 FEB 29 PM 11:11 New York January 25, 2024

The Honorable Joan M. Azrack  
District Judge  
United States District Court  
Eastern District of New York  
100 federal Plaza  
Central Islip, New York 117222

RECEIVED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.

★ FEB 29 2024 ★

LONG ISLAND OFFICE

Re: Hernandez vs Rosso Uptown  
Case 2:20-cv-04026-JMA-SIL

**PRETRIAL**

**Motion to dismiss pre trial**

Dear Judge Azrack,

I hope this letter of mine finds you well. It has been impossible for me to establish any contact with the attorney that is representing Mr. Gammella and that was extending his help to me. I tried to reach him and asked if he could present any letter to the court stating he would withdraw from the case allowing me to proceed pro-se, all my attempts have been unsuccessful.

I am writing to bring to your attention certain key aspects of the ongoing case, specifically the plaintiffs' attorney claims against me as an officer and owner of the corporation in question. I have legal proof that I was never an employee or an officer of "Rosso Uptown LTD"

I have diligently cooperated with the plaintiffs' attorney through the discovery and deposition process, I have provided Mr. Moser extensive documentation, including Schedule k-1 (form 1120s) **Exhibit A**, and form 2553 **Exhibit B**, which unequivocally demonstrate that I hold zero ownership in the corporation being sued, these documents are not only legally valid but also refute the plaintiffs' baseless assertions.

Furthermore, I would like to highlight that upon information shared with me by Mr. Gammella, the corporation's annual sales fall below the \$500,000 thresholds, rendering it exempt under the Fair Labor Standard Act (FLSA). This exemption further underscores the lack of merit in the plaintiffs' claims against me as I don't qualify as an employer.

**According to the U.S. Department of Labor, the act applies to businesses with \$ 500,000 in annual dollar volume of business or more. A company with less than half a million dollars in annual business is generally not covered"**

It is essential to note that the evidence presented to me at deposition by the plaintiffs' lawyer in the form of Facebook posts or Newspaper's ads, is largely hearsay and lacks the necessary legal foundation. Despite my efforts to provide Mr. Moser with irrefutable proof of my non-involvement in the ownership of the corporation, the plaintiffs' case remains unsupported by credible evidence.

Furthermore, I am attaching supporting documentation (**Exhibit C**) that illustrate the extent of my financial distress. Due to unforeseen circumstances, I am currently facing significant economic hardship that if the court will impose me to fulfill any monetary compensation, my obligations to the State and IRS (and Income Execution **Exhibit D**) it will make it nearly impossible for the plaintiffs to collect.

In light of the aforementioned circumstances, I kindly request the court's dismissal in the **interest of justice** of this case against me. The plaintiffs' failure to present **competent legal evidence** and clear documentation proving my non-ownership should be sufficient grounds for dismissal.

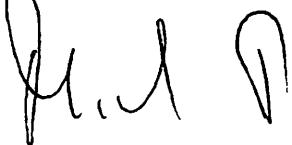
In the eventuality of a trial, this is my list of witnesses and subpoenas I intent to exercise:

Joe De Guida,  
Chase Bank

I appreciate your attention to the matter and trust that the court will evaluate the evidence objectively.  
Thank you for your time and consideration.

Respectfully,

Michael Tizzano

A handwritten signature in black ink, appearing to read "M.T." followed by a stylized surname.

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**EXHIBIT A**

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EXHIBIT B

**Form 2553**

(Rev. December 2012)

Department of the Treasury  
Internal Revenue Service**Filed Pursuant to Rev. Proc. 2013-30****Election by a Small Business Corporation**

(Under section 1362 of the Internal Revenue Code)

► See Parts II and III on page 3.

► You can fax this form to the IRS (see separate instructions).  
Information about Form 2553 and its separate instructions is at [www.irs.gov/form2553](http://www.irs.gov/form2553).

OMB No. 1545-0123

**Note.** This election to be an S corporation can be accepted only if all the tests are met under Who May Elect in the instructions, all shareholders have signed the consent statement, an officer has signed below, and the exact name and address of the corporation (entity) and other required form information have been provided.

**Part I Election Information**

<b>Type or Print</b>	Name (see instructions) <b>ROSSO UPTOWN LTD</b>	A Employer identification number <b>46-1806292</b>
	Number, street, and room or suite no. (If a P.O. box, see instructions.) <b>52 MAIN STREET</b>	B Date incorporated <b>01/15/2013</b>
	City or town, state, and ZIP code <b>Port Washington NY 11050-2952</b>	C State of incorporation <b>NY</b>

D Check the applicable box(es) if the corporation (entity), after applying for the EIN shown in A above, changed its

E Election is to be effective for tax year beginning (month, day, year) (see instructions) **Form 1128 ► 01/15/13**

Caution. A corporation (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than January 1.

## F Selected tax year:

(1)  Calendar year  
 (2)  Fiscal year ending (month and day) ► \_\_\_\_\_  
 (3)  52-53-week year ending with reference to the month of December  
 (4)  52-53-week year ending with reference to the month of \_\_\_\_\_

If box (2) or (4) is checked, complete Part II

G If more than 100 shareholders are listed for Item J (see page 2), check this box if treating members of a family as one shareholder results in no more than 100 shareholders (see test 2 under Who May Elect in the instructions) ► 

H Name and title of officer or legal representative who the IRS may call for more information

I Telephone number of officer or legal representative  
**516-633-7977****MASSIMO GAMMELLA****PRESIDENT**

If this S corporation election is being filed late, I declare that I had reasonable cause for not filing Form 2553 timely, and if this late election is made by an entity eligible to elect to be treated as a corporation, I declare that I also had reasonable cause for not filing an entity classification election timely and that the representations listed in Part IV are true. See below for my explanation of the reasons the election or elections were not made on time and a description of my diligent actions to correct the mistake upon its discovery (see instructions).

**Election was filed for both NYS and the IRS.****For some reason there was an administrative error and the original 2553 was not recorded.****Sign Here**

Under penalties of perjury, I declare that I have maintained this election, including accompanying documents, and, to the best of my knowledge and belief, the documents contain all the relevant facts relating to the election, and such facts are true, correct, and complete.

**PRESIDENT AND CEO**

Signature of officer

Title

**8/3/15**

Date

For Paperwork Reduction Act Notice, see separate instructions.

DAA **MASSIMO GAMMELLA****Form 2553 (Rev. 12-2013)**



CONFIDENTIAL

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EXHIBIT C

1/25/24, 7:54 PM

New York State Tax Warrants

Department of  
Taxation and Finance

## New York State Tax Warrants

### Warrant Search

Enter the search criteria and select **Search**. The search results will only include open New York State tax warrants. For information on satisfied warrants, visit the New York State Department of State website at [Tax Warrant Notice System](#). Select **Clear** to start over.

Select to learn more about a particular field

**Warrant search**

The information in this database is current up to January 24, 2024.

Name search:	Contains this word(s) <input type="button" value="▼"/>
Taxpayer name:	Michele tizzano
County in which warrant is filed:	All <input type="button" value="▼"/> or Select county <input type="button" value="▼"/> or <input type="button" value="Select county ▼"/>
City specified in warrant address record:	
ZIP Code specified in warrant address record:	
Warrant ID:	
Docket amount (\$):	.00 to .00
Docket date:	to
Tax type:	All <input type="button" value="▼"/>
Sort:	Descending <input type="button" value="▼"/> on Docket amount <input type="button" value="▼"/>
<input type="button" value="Clear"/> <input type="button" value="Search"/>	

### Warrant details

Select to view the current balance due for a docketed warrant.

Showing 1-3 out of 3

Warrant ID	Taxpayer name	County	Tax type	Docket date	Docket amount (\$)
▼ E0369581 68W001	MICHELE TIZZANO INDIVIDUALLY AND AS A RESPONSIBLE PERSON OF ROMANTICO NEXT DOOR, INC.	NASSAU U	SALES TAX	11/03/201 4	411,965.69
	Current balance (\$):	1,133,206.17			
▼ E0369581 68W002	MICHELE TIZZANO INDIVIDUALLY AND AS A RESPONSIBLE PERSON OF I TRETRE, LTD.	NASSAU U	SALES TAX	11/03/201 4	335,218.74
	Current balance (\$):	746,683.94			
▼ E0369581 68W008	MICHELE TIZZANO	NASSAU U	PERSONAL INCOME TAX	07/27/20 17	53,828.05
	Current balance (\$):	78,792.60			

Showing 1-3 out of 3

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EXHIBIT

D



**Department of  
Taxation and Finance**

Civil Enforcement Division  
W.A. Harriman Campus, Albany NY 12227-0841

**Income Execution Billing Notice**

Date: 10/14/2022

Taxpayer ID: [REDACTED]-7964

IE ID: E-036958168-E018-4

IE Balance Due: \$ 70,449.77

(as of Billing Date)

**Payment Amount Due:**Up to 10% of gross wage and/or  
commissions for each payroll period.

Instructions are on second page.

For Your Records	
Payment Due	Payment Amount
[REDACTED]	[REDACTED]

Keep this part for your records.

Return this part with your payment.

DTF-982.4 (5/15)

**Income Execution Payment Document**

Taxpayer ID: [REDACTED]-7964

• Income Execution ID: E-036958168-E018-4

TIZZANO-MICHELE  
FIRST SERVICE